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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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7 UNITED STATES OF AMERICA,
8 Plaintiff,
9 v.
10 JOHN CHING EN LEE,
11 Defendant.

Case No. [15-cr-00541-SI-1](#)

**ORDER DENYING UNITED STATES'
MOTION TO DISMISS AND STAYING
BRIEFING SCHEDULE ON § 2255
MOTION**

Re: Dkt. No. 171

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The United States has filed a motion to dismiss defendant John Ching En Lee's pending motion brought under 28 U.S.C. § 2255. Dkt. No. 171. On November 2, 2018, while defendant's 2255 motion was pending, defendant filed a petition for writ of certiorari to the United States Supreme Court. Dkt. No. 170. The government now moves to dismiss the 2255 motion without prejudice, arguing that the 2255 motion is premature and that defendant should re-file his motion once he has exhausted his direct appeal.

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According to its Public Information Office, the Supreme Court, on average, acts on petitions for certiorari within about six weeks after a petition has been filed. *See* Public Information Office, Supreme Court of the United States, *A Reporter's Guide to Applications Pending Before the Supreme Court of the United States*, 16, <https://www.supremecourt.gov/publicinfo/publicinfo.aspx>. Given that three weeks have already passed since defendant filed his petition, the Court finds the most expeditious route is to stay briefing on the 2255 motion until the Supreme Court has acted on the petition for writ of certiorari.

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Accordingly, the Court DENIES the government's motion to dismiss and STAYS the briefing on the 2255 motion. The government shall notify the Court within one week once the Supreme Court has acted on defendant's certiorari petition. If the Supreme Court grants the petition,

1 the government may renew its motion to dismiss. If the Supreme Court denies the petition, the
2 government may propose a revised briefing schedule for the pending 2255 motion.

3 The December 14, 2018 hearing on the motion to dismiss is VACATED.
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5 **IT IS SO ORDERED.**

6 Dated: November 27, 2018
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8 SUSAN ILLSTON
9 United States District Judge
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